

# Court of Appeals, State of Michigan

## ORDER

Steven Swearinger v DaimlerChrysler Corporation

Docket No. 272158

LC No. 05-513198-NO

Brian K. Zahra  
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly  
Judges

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The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's June 26, 2006 order denying defendant's motion for summary disposition is REVERSED. Plaintiff does not dispute that the snow-covered surface presented an open and obvious danger. See *Ververis v Hartfield Lanes (On Remand)*, 271 Mich App 61; 718 NW2d 382 (2006). Instead, plaintiff claims that there were "special aspects" of the condition which created an unreasonable risk of harm despite the open and obvious nature of the condition. See *Lugo v Ameritech Corp Inc*, 464 Mich 512; 629 NW2d 384 (2001). In particular, plaintiff argues that the condition was "effectively unavoidable." However, there is no evidence that plaintiff was absolutely required to make the delivery at that particular time, on that particular date. In other words, plaintiff could have delayed making the delivery. Therefore, the condition was not "effectively unavoidable" such that plaintiff was essentially trapped and forced to encounter the condition. See e.g., *Joyce v Rubin*, 249 Mich App 231, 242; 642 NW2d 360 (2002).

This case is REMANDED to the trial court for entry of judgment in favor of defendant. We do not retain jurisdiction. This order shall have immediate effect. MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 23 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk